Local Union No. 91 of the Sheet Metal Workers International Association *and* Blount Brothers Corporation and J & J Steel Erectors, Inc. and Local 577, International Association of Bridge, Structural & Ornamental Ironworkers of America, AFL-CIO. Case 33-CD-235

April 16, 1981

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by Blount Brothers Corporation, herein called Blount Brothers, alleging that Local Union No. 91 of the Sheet Metal Workers International Association, herein called the Sheet Metal Workers, had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring J & J Steel Erectors, Inc., herein called the Employer or J & J Steel, to assign certain work to its members rather than to employees represented by Local 577, International Association of Bridge, Structural and Ornamental Metal Ironworkers of America, AFL-CIO, herein called the Ironworkers.

Pursuant to notice, a hearing was held before Hearing Officer Richard M. Blum on December 22, 1980. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer, a Delaware corporation with its principal place of business in Morning Sun, Iowa, is engaged in the general construction industry. During the past year, the Employer purchased goods from outside the State having a value of $50,000. The parties also stipulated, and we find, that the Employer and Blount Brothers are engaged in commerce within the meaning of Section 2(6) and (7) of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that the Sheet Metal Workers and the Ironworkers are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *Background and Facts of the Dispute*

Blount Brothers is engaged in constructing a project at the Iowa Ammunition Plant located at Middletown, Iowa. J & J Steel has a subcontract to do certain work for Blount Brothers. The testimony indicates that the contract did not contemplate the work being done by any particular craft.

On or about September 22, 1980, the employees represented by the Ironworkers began doing the work in dispute. The ironworkers had previously been erecting structural steel buildings for the Employer on the site. On September 29, 1980, Kenneth Martinez, business representative for the Sheet Metal Workers, advised in a letter to Blount Brothers and J & J Steel that "a dispute exists between Sheet Metal Workers # 9 and Iron Workers # 557 over work assignments made by J & J Steel Erectors" concerning the disputed work. In addition, on September 29, 1980, Martinez wrote his International union office requesting that the issue regarding the disputed work be referred to the Impartial Jurisdictional Disputes Board for the Construction Industry, hereinafter referred to as the IJDB, for a ruling.

On October 31, 1980, the IJDB informed all parties that the work in dispute should be assigned to employees represented by the Sheet Metal Workers. Martinez was advised shortly thereafter by John Johnson, owner of J & J Steel that J & J Steel was not bound by any decision of the IJDB and would refuse to implement the IJDB decision.

Subsequently, around 7 a.m. on November 10, 1980, the Sheet Metal Workers commenced picketing at the ammunition plant's construction gate. Picketing ceased several hours later at or about 1:30 p.m. on that same date, and the Sheet Metal Workers gave assurances that it would not resume picketing pending a decision by the Board.

B. *The Work in Dispute*

The work in dispute involves the handling and installation of metal roof decking lighter than 10 gauge (built-up and weatherseal) fascia, drain through, gutters, downspouts, and all flashings, aluminum wall covering, and metal ceilings at the Iowa Army Ammunition Plant, Line 4A L/A/P Detonator Facility Project in Middletown, Iowa.

C. *The Contentions of the Parties*

The Sheet Metal Workers contends that the disputed work should be awarded to the employees it represents. In this regard, the Sheet Metal Workers takes the position that, because the Employer's collective-bargaining agreement with the Ironworkers

contains language regarding dispute settlement, the Employer and Ironworkers are bound by, and should honor, the October 31, 1980, decision of the IJDB which awarded the disputed work to the employees represented by the Sheet Metal Workers. Additionally, the Sheet Metal Workers contends that the factors of skill, industry and area practice, and economy favor an award to the employees it represents.

The Employer contends that its collective-bargaining agreement with the Ironworkers does not bind it to any decision of the IJDB. Furthermore, the Employer contends that its past practice, its collective-bargaining agreement with the Ironworkers, its preference that the employees represented by the Ironworkers perform the disputed work, and the factors of efficiency and economy favor that its assignment of the disputed work to the employees represented by the Ironworkers not be disturbed.

The Ironworkers essentially takes the same position taken by the Employer. Blount Brothers Corporation, although the general contractor and Charging Party in this proceeding, takes no position regarding the work in dispute.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that there is not in existence a method for the voluntary adjustment of the dispute.[1]

The record reveals that on or about November 10, 1980, the Sheet Metal Workers commenced picketing at the Blount Brothers construction site in an attempt to have the Employer reassign the disputed work to employees represented by it rather than to employees represented by the Ironworkers on the basis, *inter alia*, of the October 31, 1980, decision of the IJDB. Such picketing caused a cessation of work by some of the crafts working on the site.[2] The record also reveals that the Employer takes the position that it is not bound by the IJDB decision and has no intention of honoring it. Each labor organization continues to insist that the disputed work be assigned to employees it represents.

On the basis of the foregoing, we conclude that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred.

E. *Merits of the Dispute*

Section 10(k) of the Act requires that the Board make an affirmative award of disputed work after giving due consideration to various factors.[3] The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.[4]

The following factors are relevant in making the determination of the dispute before us:

The Sheet Metal Workers contends that, on the basis of the IJDB decision, the disputed work should be assigned to the employees it represents. In this regard it cites article I of the existing collective-bargaining agreement between the Ironworkers and the Employer which addresses jurisdictional disputes, and argues that both the Ironworkers and the Employer should honor the IJDB decision.

While the agreement makes reference to jurisdictional disputes, it provides in section C:

> C. If the Unions and Employers involved in a Jurisdictional Dispute are party to a voluntary plan for the settlement of such disputes such as a National Joint Board for Settlement of Jurisdictional Disputes or a successor voluntary program, a decision rendered pursuant to such a plan concerning the jurisdiction in dispute shall be implemented immediately by the individual Employer involved.

The Employer argues that it never stipulated to be bound by the National Joint Board and therefore is not bound by the IJDB decision contemplated by section C of article I of its agreement with the Ironworkers.

Inasmuch as article I does not clearly bind the Employer to the IJDB decision and as the evidence does not show the Employer is stipulated to be bound to the National Joint Board, we find that there is no agreed-upon method for the voluntary adjustment of the dispute to which all parties are bound. Accordingly, the dispute is properly before

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[1] On March 23, 1981, after the hearing was closed and this case was transferred to the Board, the Employer filed a motion to reopen the record for the admission of a decision of an impartial umpire of the IJDB, which found that the Employer was not stipulated to be bound to the National Joint Board. Inasmuch as that decison, if admitted, would not alter the result herein, we find it unnecessary to reopen the record for the receipt of such evidence. Accordingly, the motion is denied.

[2] The picket sign stated:

> J & J Steel Erectors, Ironworkers No. 577 are in violation of procedural rules of the Impartial Jurisdictional Dispute Board by not honoring their decision of 10/30/80. By this picketing no one is being asked to stop working or refuse to make deliveries.

It appears that all employees, except those of J & J Steel refused to work behind the picket line.

[3] *N.L.R.B.* v. *Radio & Television Broadcasting Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO* [*Columbia Broadcasting System*], 364 U.S. 573 (1961).

[4] *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402 (1962).

the Board for determination under Section 10(k) of the Act.

1. Collective-bargaining agreement

There is no evidence indicating that a Board certification covers the disputed work.

The Employer does not have a contract with the Sheet Metal Workers. Although it has a contract with the Ironworkers, there is no clause in that contract covering the disputed work. Thus, there is no contractual factor favoring the assignment of the disputed work to either group of employees.

2. Area and industry practice

The Employer introduced evidence that its employees who are represented by the Ironworkers have performed work such as that in dispute for over 15 years. Donald F. Crist, the business agent for the Ironworkers, also testified that employees represented by the Ironworkers have performed similar work for other employers in the area. The Sheet Metal Workers asserts, however, that the work in dispute is work that is normally assigned to employees represented by the Sheet Metal Workers in the area.

As the evidence concerning area practice is inconclusive, we find that this factor does not favor assignment of the disputed work to either group of employees.

3. Company past practice

The record reveals that the Company's standard practice has been to assign the disputed work to its own employees who are represented by the Ironworkers. This factor favors an award consistent with the Employer's assignment.

4. Relative skills

Each Union contends that employees represented by it should be awarded the disputed work on the basis of skills possessed by said employees. The record, however, does not indicate that the skills required in performing the disputed work are of a nature which favors the disputed work being awarded to either Union as opposed to the other.

5. Efficiency of operation

The Employer presented testimony which tends to show that in addition to its employees represented by the Ironworkers being able to perform the disputed work, they are also able to perform other work covered by the subcontract. Since by using employees represented by the Ironworkers to move from job to job, the Employer is able to avoid disruption in its routine, we find that the factor of efficiency favors an award consistent with the Employer's assignment.

7. Employer preference

The Employer has continually used employees represented by the Ironworkers to perform the work in dispute. It states that it is satisfied with their performance and prefers that they continue performing it. Thus, the Employer's preference favors an award of the disputed work to employees represented by the Ironworkers.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors involved, we conclude that employees who are represented by the Ironworkers are entitled to perform the work in dispute. We reach this conclusion relying on the Employer's past practice, efficiency of operation, and the Employer's preference. In making this determination, we are awarding the work in question to employees who are represented by Ironworkers, but not to that Union or its members. The present determination is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

1. Employees of J & J Steel Erectors, Inc., who are represented by Local 577, International Association of Bridge, Structural & Ornamental Ironworkers of America, AFL-CIO, are entitled to perform the disputed work at the Middletown, Iowa, facility.

2. Local Union No. 91 of the Sheet Metal Workers International Association is not entitled, by means proscribed by Section 8(b)(4)(D) of the Act, to force or require J & J Steel Erectors, Inc., to assign the disputed work to employees represented by that labor organization.

3. Within 10 days of the date of this Decision and Determination of Dispute, Local Union No. 91 of the Sheet Metal Workers International Association shall notify the Regional Director for Region 33, in writing, whether or not it will refrain from forcing or requiring the Employer, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work in a manner inconsistent with the above determination.